

TUCKER & SNYDER EXPLORATION, INC.

IBLA 79-366

Decided July 30, 1980

Appeal from decision of the Nevada State Office, Bureau of Land Management, rejecting oil and gas lease offer N-20664, etc.

Affirmed.

1. Oil and Gas Leases: Discretion to Lease

Under sec. 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1976), the Secretary of the Interior has discretion to refuse to issue an oil and gas lease lying within the boundaries of the National Desert Wildlife Range in the interest of conservation, wildlife protection, and other purposes in the public interest.

2. Oil and Gas Leases: Discretion to Lease – Wildlife Refuges and Projects: Generally

The general prohibition against oil and gas leasing in wildlife refuges contained in 43 CFR 3101.3-3 (unless there is drainage) is a formal exercise of the Secretary's discretion under sec. 17 of the Mineral Leasing Act of 1920, as amended, 30 U.S.C. § 226 (1976).

APPEARANCES: C. M. Peterson, Esq., Poulson, Odell & Peterson, Denver, Colorado, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Tucker & Snyder Exploration, Inc., has appealed from a decision of the Nevada State Office, Bureau of Land Management (BLM), dated April 6, 1979, which rejected 12 lease offers. 1/

1/ The rejected lease offers involved in this appeal, are N-20664, N-20665, N-20666, N-20667, N-20668, N-20669, N-20670, N-20671, N-20674, N-20676, N-20677, and N-20678.

The BLM decision gave the following reason for the rejections:

The lands in your offers lie within the boundaries of the National Desert Wildlife Range. 2/ According to the Department of the Interior Sacramento Regional Solicitor's office in a memorandum dated March 22, 1979, the Range has been withdrawn for the specific purpose of "the protection, enhancement and maintenance of wildlife resources, including bighorn sheep."

"43 CFR 3101.3-3(a) * * * provides that lands withdrawn for the sole purpose of protecting all species of wildlife in a particular area are wildlife refuge lands * * *." Wildlife refuge lands are specifically exempt from oil and gas leasing under 43 CFR 3101.3-3(a) except when these lands are subject to drainage and in those instances, leases will be offered only under competitive bidding. 3/

2/ The Desert National Wildlife Range was created by Public Land Order (PLO) No. 4079 (31 FR 11547 (Sept. 1, 1966), as amended by 31 FR 12564 (Sept. 23, 1966)).

PLO 4079 provides that certain public lands are "withdrawn from all forms of appropriation under the public land laws but not from location under the mining laws * * * nor leasing under the mineral leasing laws, and reserved as the Desert National Wildlife Range * * *."

3/ The cited regulation reads as follows:

"§ 3101.3-3 Reserved and segregated lands.

"(a) Wildlife refuge lands. Such lands are those embraced in a withdrawal of public domain and acquired lands of the United States for the protection of all species of wildlife within a particular area. Sole and complete jurisdiction over such lands for wildlife conservation purposes is vested in the U.S. Fish and Wildlife Service even though such lands may be subject to prior rights for other public purposes or, by the terms of the withdrawal order, may be subject to mineral leasing.

"(1) Leasing. No offers for oil and gas leases covering wildlife refuge lands will be accepted and no leases covering such lands will be issued except as provided in § 3101.3-1. There shall be no drilling or prospecting under any lease heretofore or hereafter issued on lands within a wildlife refuge except with the consent and approval of the Secretary of the Interior with the concurrence of the Fish and Wildlife Service as to the time, place and nature of such operations in order to give complete protection to wildlife populations and wildlife habitat on the areas leased, and all such operations shall be conducted in accordance with the stipulations of the Bureau of Land Management on a form approved by the Director."

Section 3101.3-1 involves lands subject to drainage.

Appellant submits that the lands within the Desert National Wildlife Range have never been formally withdrawn from oil and gas leasing. It states that:

[T]he lands are within the National Desert Game Range, they are available for non-competitive oil and gas leasing under the provisions of the Mineral Leasing Act of February 25, 1920, (30 U.S.C. § 181, *et seq.*), as amended, and the specific provisions of the National Wildlife Refuge System Administration Act, 80 Stat. 926, specifically 16 U.S.C. § 668 dd(c), which provides that the United States mining and mineral leasing laws shall continue to apply to lands in the "Wildlife Refuge System" which includes game refuges, game ranges, coordination and Alaska Game Lands to the same extent they applied prior to October 15, 1966, the date of the Act, unless subsequently withdrawn, and 16 U.S.C. 668 dd(d) (2) which allows the Secretary to permit other uses of "Wildlife Refuge System" lands which he finds compatible with the purposes for which the area was established. The Act established criteria for determination of other uses of lands in the "Wildlife Refuge System" and that is whether they are compatible with the wildlife purposes. * * * Before the lease applications were rejected the Nevada Land Office should have made a compatibility determination as required by 16 U.S.C. § 668 dd(d) (2). The Decision was made on regulations adopted before the establishment of the Wildlife Refuge System and which were based on a mechanistic classification system which does not conform with the Wildlife System Act which provided that mineral leasing and other uses of wildlife areas could be permitted if found to be compatible.

[1, 2] We considered a nearly identical situation in T. R. Young, Jr., 20 IBLA 333 (1975). In that case, an oil and gas lease offer was rejected pursuant to 43 CFR 3101.3-3(a)(1) because the lands involved were withdrawn for waterfowl production areas. We noted that the withdrawal authority was separate from the Secretary's discretionary authority under the mineral leasing laws and found that, even though the lands at issue were not withdrawn from oil and gas leasing, the Secretary could still exercise that discretionary authority not to accept lease offers for those lands. Specifically, we held, supra at 334-335:

Under the provisions of the Mineral Leasing Act of 1920, and amendment thereto, 30 U.S.C. § 181 *et seq.* (1970), public lands are available for leasing at the Secretary's discretion. Section 17 of the Act provides that lands subject to disposition under the Act which are known or believed to contain oil or gas deposits "may be leased

by the Secretary." (Emphasis added) 30 U.S.C. § 226(a) (1970). The Act requires that if a lease is issued, it must go to the first qualified applicant, but "it left the Secretary discretion to refuse to issue any lease at all on a given tract." Udall v. Tallman, 380 U.S. 1, 4, rehearing denied, 380 U.S. 989 (1963); Schraier v. Hickel, 419 F.2d 663, 666 (D.C. Cir. 1969); Haley v. Seaton, 281 F.2d 620, 624-5 (D.C. Cir. 1960); E. L. Lockhart, 12 IBLA 250 (1973). Such discretion may be exercised for conservation, wildlife protection, and other purposes in the public interest. Id. The general prohibition against oil and gas leasing contained in 43 CFR 3101.3-3 is a formal exercise of the Secretary's discretion under section 17 of the Act. Richard K. Todd, 68 I.D. 291, 296 (1961), aff'd sub nom., Duesing v. Udall, 350 F.2d 748 (D.C. Cir. 1965), cert. denied 383 U.S. 912 (1966); George N. Keyston, Jr., Newton H. Neustadter, Jr., A-28350, A-28528 (Aug. 7, 1962).

We have more recently reaffirmed these conclusions in similar fact situations in Carol Lee Hatch, 45 IBLA 4 (1980); Dean Rowell, 45 IBLA 225 (1980); Tucker and Snyder Exploration, Inc., 43 IBLA 235 (1979); and Kenneth E. Cummings, 43 IBLA 110 (1979). In these cases we considered the same arguments as appellant presents herein and held that lands within the Desert National Wildlife Range are not subject to noncompetitive oil and gas leasing. The same considerations hold true for the facts of the instant case and appellant has not persuaded us to depart from our position in these previous rulings. Accordingly, we find that BLM properly rejected the lease offers covered by this appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur.

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

